

**REMARKS**

Claims 1-4, 6-12, 15-18, and 20-21 are pending in this application. By this Amendment, claims 5, 13, 14, and 19 are cancelled, claims 1-4, 6-12, 15-18 are amended, and claims 20-21 are added. Support for the amendments to the claims may be found, for example, in the original claims. No new matter is added.

**I. Restriction Requirement**

The Office Action asserts that there is a Lack of Unity of Invention (Restriction) between Groups I-II. In response, Applicants provisionally elect Group I, claims 1-4, 6-12 and 19. By this Amendment, claim 19 is cancelled and claims 20 and 21 are added. Applicants respectfully submit that claim 21 is encompassed by the election of Group I. This election is made with traverse.

The Office Action also requires, in the event Group I is elected, a further election of no more than one sequence of each of Groups III and IV. In response, Applicants further elect SEQ ID NO:8 from Group III and SEQ ID NO:1 from Group IV. This election is also made with traverse.

It is respectfully submitted that it is improper to restrict within a single claim. *See In re Weber*, 580 F.2d 455, 198 USPQ 328 (CCPA 1978).

Applicants respectfully assert that the Lack of Unity of Invention (Restriction) Requirement is improper under the rules of practice in PCT national phase applications. In PCT national phase applications, the Patent Office may issue a Restriction-type Requirement if no unity of invention exists. In order to issue a Restriction Requirement, the Examiner must list the groups of claims corresponding to the inventions, and explain why the groups lack unity of invention. That is, the Examiner must state why there is no "single general inventive concept." See MPEP §1893.03(d). Therefore, a single application may include one invention, or more

than one invention if the inventions are "so linked as to form a single general inventive concept." *Id.* (emphasis added). If multiple inventions are included in the application, they are deemed to be linked if there exists a "technical relationship among the inventions that involves at least one common or corresponding special technical feature." *Id.*

A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. *See* MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of invention exists between the claims, or, in other words, if there is subject matter common to all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.*

Furthermore, unity of invention only needs to be determined in the first place between independent claims, and not the dependent claims, as stated in ISPE 10.06:

In the present application, the Group II claims depend from Group I claims, and thus by definition share common special technical features. Under the PCT rules of practice, unity of invention exists because this special technical feature is common to both groups of claims, and therefore a Restriction Requirement is improper.

Further, this special technical feature is not lacking based only on the citation of U.S. Patent No. 6,420,135 to Dougherty et al ("Dougherty") in the Office Action. That is, the Patent Office must show that the special technical feature is disclosed in the prior art. That showing must be more than by the mere identification of a reference, even one noted as category "X" in the International Search Report, without any explanation of how the reference is relevant, or how it allegedly anticipates the claimed invention.

Because the Examiner has not properly demonstrated an absence of unity of invention under the rules, the Restriction Requirement is improper. Reconsideration and withdrawal of the Restriction Requirement are respectfully solicited.

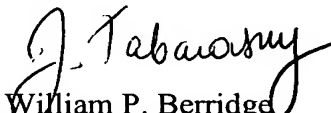
Applicants also respectfully request rejoinder of non-elected method claims 15-18 and 20. Where product and process claims are presented in the same application, Applicants may be called upon under 35 U.S.C. §121 to elect claims to either the product or process. MPEP §821.04. However, in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim. *Id.* Because process claims 15-18 and 20 include all the limitations of an allowable elected claim, process claims 15-18 and 20 must be rejoined with the product claims. Applicants respectfully request withdrawal of the Restriction Requirement and rejoinder of claim 15-18, and 20.

## **II. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

  
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